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# Nonprofit Organizations in Maine

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Maine Office of the Attorney General

Linda J. Conti

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# Statutes

- The Maine Nonprofit Corporation Act, 13-B M.R.S.A. 101 through 1406
  
  - Attorney General, 5 M.R.S.A. 194 through 194-K
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# The Maine Nonprofit Corporation Act, Title 13-B

- Public vs. Mutual Benefit
  - Financially interested person
  - Standards for Directors
  - Conflicts of interest
  - Misapplication of funds
  - Notice to the AG of certain transactions
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# Purpose

- May be formed for any lawful purpose including charitable, benevolent, eelemosynary, educational, civic, patriotic, political, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural and animal husbandry..., 13-B M.R.S.A. § 201
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# Some differences

- A nonprofit corp must have at least 3 directors, 13-B M.R.S.A. § 702
  - May not issue shares of stock or dividends, 13-B M.R.S.A. § 407
- Must have a majority of board members who are not financially interested, 13-B M.R.S.A. § 713-A
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# Who is Financially Interested?

- Anyone who has received compensation from the corporation for personal services rendered to it within the previous 12 months
  - A spouse, sibling, parent or child of the individual receiving compensation
  - No more than 49% of the individuals on the board of a public benefit corporation may be financially interested persons
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# Standards for Directors

A director shall discharge his duties

- In good faith
  - With care
  - In a manner he reasonably believes to be in the corporation's best interest
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# Discharge of Duties

In discharging his duties a director can rely on information, opinions, reports, or statements and other financial data presented by

- Officers or employees of the corporation
  - Legal counsel, public accountant
  - A committee of the board
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# Access to records

Directors have a right to inspect books and records

- For the purpose of enabling the director to fulfill duties and responsibilities conferred by articles, bylaws or the law
  - Must give 5 days notice of inspection of records
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# Conflicts of Interest

- A transaction in which the director has a direct or indirect financial interest
  - An indirect financial interest exists if
    - Another entity in which the director has an interest or is a general partner is a party to the transaction; or
    - Another entity of which the director is a director, officer or trustee is a party to the transaction.
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# Approval of Conflict of Interest Transactions (cont.)

- The director's or officer's interest is disclosed;
- The transaction is fair and equitable to the corporation; and
- The director with the conflict cannot vote

*Loans to officers or directors are prohibited, and cannot be approved*

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# Misapplication of Funds or Assets of a Public Benefit Corp.

A transfer is prohibited if

- It is a conflict of interest transaction that is either unfair or not properly approved
  - It misapplies funds or assets in violation of a statute including the conversion statute
  - It constitutes private inurement; or
  - It is to subsidiary or joint venture, UNLESS certain prerequisites are met.
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# Notice to the AG of Certain Transactions

- 13-B M.R.S.A. 802(5):

**Amendment of articles of incorporation of public benefit corporation.** If an amendment of the articles of incorporation of a public benefit corporation results in a material change in the nature of the activities conducted by the corporation, the corporation shall give notice to the Attorney General of the amendment simultaneously with the filing of the amended articles with the Secretary of State.

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# Notice to the AG of Certain Transactions (cont.)

- 13-B M.R.S.A. 907(3):

**Notice; merger or consolidation.** Written notice of a merger or consolidation of a public benefit corporation into another public benefit corporation must be provided to the Attorney General simultaneously with the filing of the articles of merger or consolidation with the Secretary of State.

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# Notice to the AG of Certain Transactions (cont.)

- Conversions (transfer or sale of substantially all of the assets or control to a noncharitable entity)
    - AG notice and court approval required if value is \$500,000 or more
    - \$50,000-500,000 value requires AG approval, or can seek court approval if AG does not
    - Less than \$50,000 requires AG notice
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# Enforcement under Title 13-B

- Attorney General can bring an action to void a conflict of interest transaction, §708
  - Attorney General may bring an action to remove director(s), § 704-A
  - Attorney General may bring an action to dissolve the corporation, §1105
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# Attorney General, 5 M.R.S.A. § 194

- Defines Public Charity to include: charitable trusts and charitable corporations formed under Title 13 or 13-B
  - Gives the AG formal investigatory powers
  - Prescribes a procedure to be followed whenever a public charity converts to a for-profit enterprise
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# When can the Attorney General Investigate?

When she reasonably believes that:

- A conversion is taking place and the converting nonprofit has not complied with the statutory conversion process or
  - A public charity has applied its funds or assets
    - In violation of a statute;
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# Investigation

- ❑ For noncharitable purposes unrelated to the operations of the public charity; or
  - ❑ For private inurement or excess benefits provided to directors, officers, disqualified persons or others deemed insiders under applicable federal law for tax-exempt organizations
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# Penalties

- Attorney General can seek a penalty against individuals
  - Seek return of property from individuals to the corporation
  - Void conversion transactions
  - See 5 M.R.S.A. § 194-K
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# A note on taxation

- Just because a nonprofit is exempt from federal tax under 26 U.S.C. 501(c)(3),
  - Does not mean it is necessarily exempt from state or municipal property tax under 36 M.R.S.A. 652(1)(A)
  - See *Credit Counseling Centers, Inc. v. South Portland*, 2003 ME 2, 814 A.2d 458
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# Resources

- Private foundations and public charities required to file 990s (tax returns) w/IRS
  - Private foundations also required to file w/AG
  - Guidestar ([www.guidestar.org](http://www.guidestar.org)), a national database on nonprofit corporations, maintains tax returns and a lot of other information on nonprofits
  - Guide for Board Members of Charitable Corporations
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